IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10229 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI SHANABHAI VAGHRI @ TALPADA

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 24th August, 1999, made against him by

the District Magistrate, Nadiad, , under the powers conferred upon him under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It appears that as many as seven prohibition offences have been registered against the petitioner. At the relevant time, six of them were pending trial, and the last registered on 4th July, 1999, was pending investigation. In each of the said cases, a large quantity of country liquor was recovered from the possession of the petitioner. The petitioner is, therefore, held to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act and the explanation thereto. Besides, some five persons, on assurance of anonymity, have given statements in respect of the activities of the petitioner which are detrimental to the public tranquility and the even tempo of life. The petitioner's activities are, therefore, also held to be prejudicial to the maintenance of public order.

Amongst other grounds, it is contended that though the material recovered from the petitioner is alleged to be country liquor, the petitioner has not been supplied the reports of the Chemical Analyser in any of the aforesaid seven offences. Even in six of the cases, where the chargesheets have been filed along with the charge papers, the petitioner has not been given the FSL report. The petitioner, therefore, under his application dated 4th December, 1999, demanded such reports. The application has not been responded to, nor the petitioner has been furnished the reports of the Chemical Analyser. It is submitted that the reports of the Chemical Analyser are vital documents so as to enable the detenu to make an effective representation. Whether the Detaining Authority relies upon it or not, the detenu is entitled to receive such reports. The contention is contested. It is submitted that at the relevant time the reports of the Chemical Analyser were still not available and the Detaining Authority could not have supplied the said documents to the petitioner. Be it noted that the Detaining Authority has not filed the counter-affidavit and the facts have not been stated on oath. Besides, even if that were so, the Detaining Authority could have accordingly replied the application dated 4th December, 1999. But I am informed that the said application has also not been replied to. In absence of the assertions

made on oath, the oral statements can not be relied upon. It is a settled proposition of law that the report of the Chemical Analyser in a prohibition case is a vital document and is required to be supplied to the detenu, if available. There is one more infirmity which is found in the present case. The application for release on bail made in respect of the CR No. 444/99 registered on 12th May, 1999, has not been supplied to the petitioner. The said document being vital, ought to have been supplied to the petitioner along with the order of detention and the grounds thereof. I am, therefore, constrained to hold that the impugned order is vitiated on account of non-supply of relevant materials.

Petition is allowed. The impugned order dated 24th August, 1999 is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI